IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 15-11-1995.

CRIMINAL APPEAL NO. 634 OF 1987

For Approval and Signature:

THE HON'BLE MR. JUSTICE A.N. DIVECHA

And

THE HON'BLE MR. JUSTICE H.R. SHELAT.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of Judgment ?

4. Whether this case involves substantial question of law as tothe interpretation of the Constitution of India, 1950 or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

Shri P.M. Vyas, Advocate for the appellant.
Shri S.T. Mehta, Additional Public Prosecutor for the respondent State.

Coram: A.N. Divecha,J. & H.R. Shelat,J.
(15-11-1995)

ORAL JUDGMENT: (Per: H.R. Shelat, J.)

The then learned Sessions Judge of Panchmahals at Godhra, in Sessions Case No. 73 of 1986, on 29th July 1987, convicted the appellant of the offence under Section 302 and Section 201 of the Indian Penal Code and sentenced him for the offence under Section 302 to life imprisonment; and for the offence under Section 201 rigorous imprisonment for 2 years, and a fine of Rs.1,000/-, in default, further rigorous imprisonment for 6 months, and therefore the present appeal before us by the original accused-appellant.

2. In short, it is the case of the prosecution that on 3rd March 1986 at 10.30 p.m.,the appellant serving as a school-teacher gave blows by a washing club on the head of his wife Savitaben and caused the injuries which were sufficient in the ordinary course of nature to cause death, and thereby intentionally caused death of his wife Savitaben. Not only that but with the intention to save himself from the legal consequences he put the dead body into a cask and then locked the same with the number-lock and hid the same in the pit which was available in the school compound where he was residing. Thereafter as and when members of the staff, and the family members inquired, he pretended saying that Savita had gone to her Natal house. On 14th March 1986 the appellant with his three children namely Saroj, Sonal and son went to his mother-in-law's place and informed that Savita was missing for the last few days and he was in search of her. He immediately left the place handing over the custody of his 3 children to Kankuben, his mother-in-law. His mother-in-law thereafter also inquired about his daughter Savita. She made inquiries at different places where her relatives were residing. She also moved around different places but got no information and her efforts were in vain. Her other son-in-law, Valchand Dhulabhai, was residing at Ahmedabad. He is the husband of Madhuben, the eldest daughter of Kankuben. On 25th March 1986, he was at Ratlam and had gone to Dahod. At that time Kankuben informed that Savita was missing. Thereafter Valchand and Kankuben made search but could not find Savitaben. Once Kankuben and Valchand who had gone out in search of Savitaben were returning from Vadodar by the S.T. bus. As the luck would have it, the appellant was also travelling by the same bus. They espied the appellant in the bus. Both then made him to alight at Piplod. Thereafter he was questioned about Savita. The appellant admitted that he had killed Savita and they could do their worst, and also said that he had buried Savita placing her dead body in the cask. Thereafter going to the police station they lodged a complaint. The police officer of Devgadhbaria police station initiated the investigation. At the conclusion of the investigation the charge-sheet against the appellant for the aforesaid offences came to be filed before the Court of the learned Judicial Magistrate, (First Class) at Devgadhbaria. As he was not competent to hear and decide the matter the learned Magistrate committed the case to the Sessions Court at Godhra which came to be registered as Sessions Case No. 73 of 1986. The learned Judge framed the charge at Exh.2. It was read over and explained to the appellant. The appellant pleaded not guilty and claimed to be tried. The prosecution then adduced necessary evidence. The learned Judge appreciating the evidence before him came to the conclusion that the charge was duly proved beyond reasonable doubt. He therefore held the appellant guilty, and sentenced him as stated hereinabove.

3. Preferring the appeal, the appellant has challenged the judgment and order convicting and sentencing him of the offences with which he was charged. Mr. P.M. Vyas representing the appellant submitted that the learned Judge erroneously accepted the evidence of the witnesses, and more particularly the evidence of Sarojben aged about 8 years who is said to have seen the incident. As there were glaring contradictions their evidence was inspiring no confidence. Further the evidence of Sarojben (Exh.28) was not recorded administering oath.The F.I.R. was filed very late. Every one owing to hatred assumed against the appellant. This Court was therefore the hope for the absolution. Mr. Mehta, the learned Additional Public Prosecutor representing the respondent submitted that in fact there was no infirmity in the evidence led by the prosecution and there was no cause to doubt the testimony of any of the witnesses. By demagogy the defence could not succeed. The appellant was catching anything available like a drowning man. By trite, insignificant, and flabby submissions the dreamy appellant had weltered, and had made a lame attempt to crumple and scuttle the prosecution's case, but it was a far cry. The evidence on record was leaving no scope or way out favouring the defence.

4. We have carefully perused the evidence of all the witnesses and we see no justification to disbelieve or doubt the testimony of any of the witnesses. Dr. Parmar who performed the post mortem has been examined at Exh.7. He could see the following injuries on the dead body of Savitaben;

Decomposed swollen body. Skin was dark bluish, discololured and peeled off. Fractures unrecognisable. Bristers forming all over the body. Nails and hair loose and earlily detached. The eyeball was soft and yielding. Cornea was white and milky and concave. Abdomen was distended with gas. The tongue was swollen and protruded from mouth. Skin was dark, bluish, discoloured and peeled off due to putrefaction. Comminuted fracture of left temporal and left parietal bone at skull. Brain was liquified greyish fluss. Ribs were loose softened decomposed, soft, loose, semifluid black mars. Greenish and softened putrefied. Lungs were dark bluish, soft collpse, redbead to a small black mars.

According to the Doctor, the death was the result of the above injuries. He opined that all those injuries were possible by a washing club and were sufficient to cause death in ordinary course of nature. On the basis of the Doctor's evidence it can be said that the death of Savitaben is certainly unnatural. Whether death is caused by the appellant is the point now arises for consideration.

5. Kankuben Maganbhai, the mother-in-law of the appellant

has deposed before the lower Court at Exh.6. She is residing at Dahod. Out of her two daughters, Madhuben and Savitaben; Madhuben has married Valchand; while Savitaben married the accused, after both were enamoured of each other. The appellant was serving as a teacher in the primary school at Vadodar. In the school compound there is a quarter and that quarter was allotted to the appellant. Savitaben and the appellant were residing in the quarter. Once about 2 months prior to the incident Savitaben had been to Dahod because of the dissension that arose between the two and it was because of Kavita a student with whom the appellant had developed intimate relations. After persuasion made from an interceder she was sent back. On 14th March 1986 the appellant with his children went to Kankuben and left the children there saying that he was going out in search of Savita as she was missing for the last few days. Thereafter Kankuben also made search at different places taking help of her another son-in-law Valchand but no one could get the trail. However both had not given up their efforts. Once Kankuben and her another son-in-law Valchand were returning from Vadodar by a bus. Accidentally, the appellant was also travelling by the same bus. Both espied the appellant. They made the appellant to alight at Piplod. On being questioned,the appellant admitted about the wrong he committed, saying that he had killed her daughter (Savita) and had buried her in the school compound. Thereafter he was taken to the outpost at Piplod and the complaint came to be lodged. Thus, Kankuben supports the case of the prosecution in toto. Valchand Dhulabhai the other son-in-law of Kankuben, has also narrated the story which he came to know from 25th March 1986. He has supported the prosecution. It also transpires from his evidence that the appellant led him, the panchas,and the policemen to his house; with the key he was having, the house was opened; and in the presence of the panchas the house was searched. It was found that there were blood-stains on the walls and the washing club was also found. The appellant took all of them to the compound of the school about 100 feet away from his place where he had interred the dead body keeping the same into a cask. By the spade the ground was dug up; the cask was brought out.The cask was locked with a numbered-lock. He was knowing the set figures of the lock. The appellant moving the figures adjusted the set number and opened the lock. The dead body of Savitaben was found. That was identified by Valchand, Kankuben and others and thereafter inquest was made. The Doctor was then called at the spot for the purpose of post mortem. Thus, Valchand also in clear terms without any doubt supports the case of the prosecution. Pankajkumar Sitaram and Balwant Somabhai were students in the school where the appellant was serving. The appellant was imparting tuition to them in 7th class where one of the students was Kavita aged about 16 with whom as alleged the appellant developed intimate relations and that resultant infatuation was the cause of the death of Savitaben. Both the students being

ignorant have not stated much on the point, but they have made it clear that once few months before the incident the appellant had asked them to dig up the pit for the purpose of erecting a lavatory as till then there was no lavatory either in the school or in his quarter, and from that very pit the dead body interred was found out. Kavitaben is examined at Exh.15. She has admitted that she was a student and the appellant was her teacher, but has denied all other allegations. Ratansinh Gopalbhai was called as a panch witness. In his presence the panchnama was drawn. The accused willingly pointed out the place where the dead body was hidden. The the appellant led them to his place; with the key he was having, the house was got opened and searched and thereafter the appellant took them to a place where Savitaben was hidden which was about 165 feet away from the residential quarter allotted to him. The appellant himself with the aid of the spade (pavda)removed the covering bricks, dug up the ground and brought out the cask and opened the lock adjusting the figures to the set-number. The dead body was brought out. It was identified as the dead body of Savitaben. Parvatbhai Bhodubhai is another panch who has also supported the prosecution testifying that in their presence the appellant took them to his place and opening the quarter, showed the place where on the walls the blood-stains were found. The blood was then collected by scraping and the panchnama to that effect was drawn.

6. Jesingbhai Terabhai Baria was the Head Master of the School wherein the appellant was serving. According to him there was only one quarter which was allotted to the appellant. On 3rd March 1986, two daughters of the appellant were absent in school. He therefore inquired why those two were not attending the school. The appellant then guardedly replied that Savitaben had gone to her mother's place and since there was no one at home to look after his minor son, his daughters had opted out from attending the school. The appellant then proceeded on casual leave on 14th and 15th March. No doubt he resumed duties on 17th March, but again proceeded on leave from 18th March to 21st March 1986 on the ground of sickness. On 24th he was required to resume the duty but he did not. Thereafter he never resumed the duties and on inquiry the Head Master came to know that the appellant was arrested in connection with the offence of murder of his wife. According to him, there was a pit in the compound of the school but the school authority had not resolved or taken the decision to construct the lavatory. Rupsing Shankerbhai was a colleague of the the appellant in the school. The appellant's daughters were studying in the class assigned to this witness. He could also mark that on 3rd March, Sonel and Saroj were absent, and on 14th March 1986 the appellant was also on leave.

7. Sarojben the minor daughter of the appellant aged about 8 at that time, is examined at Exh.28. According to her testimony, Kavita used to go to their place, not only for tete-a-tete but

for fomentation also; and so her parents were quarrelling as a result the deceased had to bear the beastliness. On the day of the incident she could see that the appellant (her father) was beating her mother-Savita by the washing club. The blows were given on the head. Her mother demanded water. When she tried to give water the appellant intervened and did not allow her to give water to Savitaben. Thereafter the appellant put out the light so that his minor daughters might not see what was happening. For want of light this witness then in fact could not see what happened thereafter. But in the morning she did make query to the appellant questioning where her mother was. The appellant suppressing the truth replied that she had gone to answer the natural call. However Saroj persisted so as to know about her mother, the appellant pointing out another lady at a distance said she was there. Sarojben thus supports the prosecution. Chandrakant Kantilal Jaiswal was called as a panch-witness. The the appellant showed his willingness to point out the place of offence and the place where the dead body was inhumed. This witness has also stated the facts without missing any link. It is evident from his evidence that the appellant showed his house, opened it with his key, and then took them to the place where the dead body was hidden. How the dead body was brought out and what then was done is not missed by the witness. Bharatbhai Maganbhai unwilling to suppress the truth, testifying the case partly half heartedly supports the prosecution with regard to search of a house and bringing out the dead body. Kesharisinh Rupsinh was serving as Police Jamadar in Piplod outpost. In his presence, the complaint was lodged which he received and registered and then on being assigned the work of investigation, started the investigation and thereafter handed over the further investigation to P.S.I. Aggrawal. Such evidence having no inherent improbabilities on record without any doubt lead us to hold that the prosecution has fully established the charge levelled against the appellant. The learned Judge below has therefore rightly accepted the evidence and held the appellant guilty.

8. However, Mr. Vyas, the learned Advocate representing the the appellant submitted that there were certain contradictions in the evidence of certain witnesses which would show that the story narrated was far from truth, there were improvements, and for the reasons not known, the appellant was wrongly embroilled. Balwant Soura stated that Kavita used to go to the appellant's house while Kavita stated that once on diwali occasion the appellant and his family members had stayed overnight at her place but they did not state so before the Court. Kankuben did not state before the police that Saroj informed her. Valchand did not state before the police that the appellant told him to do his worst and after alighting from bus at Piplod, they consumed 1 1/2 hours for interrogation. Mukund Vyas did not state that the doctor was with him when he went to the appellant's house. Balwant and

Pankaj did not state before the police that Kavita used to go to the appellant's house. Jesing T. Bariya did not state before the police that the appellant explained why his daughters were not attending school. Saroj did not state before the police that Kavita used to go to her house for fomentation. She tried to give water and the appellant did not allow her to give. Her mother was shouting for help etc. It appears to us that by such submission the appellant has tried to catch anything available like a drowning man. In our view, such minor contradictions, not impairing the pith and gist of the case cannot lead us to hold that the case of the prosecution is nothing but a drivel as sought to be urged pointing out such contradictions. Such minor contradictions are bound to be there, on the contrary such discrepancies ordinarily lead the court to hold that the witnesses tell the truth and there is no concoction, ill-will or spite. The Supreme Court in the case of Narotam Singh vs. State of Punjab and another - AIR 1978 Supreme Court 1542 while dealing with the contentions with regards to contradiction has berated observing as under;

"Discrepancies do not necessarily demolish testimony;
delay does not necessarily spell unveracity and tortured technicalities do not necessarily upset conviction when the Court has had a perspicacious, sensitive and correctly oriented view of the evidence and probabilities to reach the conclusion it did. Proof of guilt is sustained despite little infirmities, tossing

peccadilloes and peripheral probative shortfalls. The
'sacred cows' of shadowy doubts and marginal mistakes, procedural or other, cannot deter the Court from punishing crime where it has been sensibly and substantially brought home."

It is held by the Supreme Court in another case between State of U.P. vs. Manoharlal and others-AIR 1981 Supreme Court 2073 as under;

"That in heinous nature of offence not affecting the crux
and chest of the case are bound to occur and while appreciating the evidence the court cannot have a computerised approach without giving any allowance to human factor."

Again when an occasion arose the Supreme Court has expressed its resentment with regards to the attempt made to succeed on the basis of minor contradictions in the case of Bharwada Bhoginbhai

Hirjibhai vs. State of Gujarat-AIR 1983 Supreme Court 753, observing:-

"Overmuch importance cannot be given to minor discrepancies. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, therefore, cannot be annexed with undue importance. More so when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses."

If accordingly the evidence of the witnesses are appreciated we do not find any justification to disbelieve the witnesses for the contradictions pointed out are minor or trivial, and play no pivotal role affecting the crux and gist of the case.

9. Mr. Vyas then made a lame attempt to convince us submitting that in this case though the offence was committed on 3rd March 1986 the complaint came to be lodged on 27th March 1986. Thus there was a delay of about 24 days which was fatal to the prosecution. He also urged to hold that delay was caused so as to make out a case and implicate the appellant. The contention is misleading. Of course delay in some cases will be fatal to the prosecution but not as a matter of course in all cases. If the delay is satisfactorily explained, howsoever long the same may be, will not be fatal to the prosecution. We in this case find satisfactory explanation from the materials on record. On 3rd March, 1986 the incident happened, but no one except Saroj the minor daughter came to know. Saroj was in dilemma because she was initially made to understand that her mother had gone out to answer the natural call, and thereafter she was told that her mother had gone to her Natal house. Once the appellant made her to believe that the woman going at a distance was her mother. She was naturally being a girl of 8 years puzzled and could not know what to do, where to go and what to say and to whom. As she was also puzzled being misdirected she could therefore do nothing. It is also pertinent to note that on one or the other pretext she was not allowed to attend the classes and was compelled to stay at home so that she might not come in contact with others and divulge about the incident that took place. When such precaution the appellant had taken, naturally no one else could know immediately about the incident. The appellant also cleverly took extra care while disposing of the dead body. He did not allow any one to visit him, and also saw that the dead body was not seen by any one. He therefore packed the dead body in the cask, locked the same and during night time throwing the cask into the pit covered the same with dust so that no one would come to know even by smell or perceive. Thereafter on 14th March 1986 the the appellant went to her mother-in-law at Dahod with his minor children and placed them in

her custody. He immediately left the place saying that Savita was missing and he was going in search of her. He left so suddenly that Kankuben got no time to ask for further and better particulars and know in details what had happened,what was the reason for Savita to leave the house and where she could be etc. Kankuben was thus kept in dark without any scope to riddle. She was an illiterate woman, she could not know what to do, whom to approach, how to find out a solution or a way, and where to contact the appellant. She was put to quandary. However, Kankuben made all endeavours leaving no stone unturned so as to find out Savitaben. She moved from place to place individually or in the company of her other son-in-law, but from nowhere she could get the clue. Once she and her son-in-law Valchand were returning by the bus from Vadodar. In the same bus,as the coincidence would have it, the appellant was also travelling. They espied him. They suddenly seized the opportunity and caused him to alight at Piplod. On making necessary queries the incident came to light. Thereafter immediately Kankuben and Valchand went to the Piplod outpost for the purpose of lodging the complaint, and the complaint came to be lodged. It is evident from such facts on record, that without any delay the F.I.R. was lodged. There is in fact no delay as soon after they came to know of the incident the complaint was lodged. The delay if any is caused is satisfactorily explained. The delay is not deliberate, it in no way points to concoction, and we cannot hold that the appellant has been falsely implicated after making out a case. Further there is nothing on record answering the point why Kankuben should falsely rope in the appellant. On the contrary she in past with a view to always making both happy,interceded and sent the deceased back to the appellant. Delay if at all caused, it is because the appellant suppressed the truth and misdirected all concerned. The appellant cannot take advantage of the so called delay, his own creation. The contention therefore fails.

10. It was next submitted that, in this case there was no eye witness. It seems, the learned Advocate lost the sight of the evidence of Sarojben about which we have hereinabove referred to. It was therefore submitted that, when oath was not administered to Sarojben her evidence was of no value, it was required to be ignored. We cannot accept the submission. If by putting necessary questions the Court is of the opinion that to the child witness the oath should not be administered, the Court is free not to administer and record the evidence. In that case the evidence has to be weighed with care and caution so as to be satisfied that the child had good grasp, memory, observation power and capacity to express. We have gone through the evidence of Sarojben and found that the lower court did ascertain about such capacities and then her evidence was recorded. She had no idea about oath and its consequences to the required level and so oath was not administered. She was in all other respect a

competent witness. When weighed with great care no inherent improbability is found in her evidence; it inspires confidence leaving no room to doubt. Sarojben being above all worldly vices has told the unvarnished truth. Her evidence can therefore be relied upon although oath is not administered. It may be stated that as per the proviso to Sec.4 of The Oaths Act, where the witness is a child under the age of 12 years the Court can examine such witness without administering oath if the court finds that the witness understands the duty of speaking the truth although he does not understand the nature of oath; and in that case the evidence of such witness will neither be inadmissible nor affect the obligations to state the truth. The evidence recorded therefore cannot be discarded especially when the lower court ascertained the capacity to understand, state, express, grasp and observe and memory power, and then recorded the evidence.

11. Sarojben at one stage has stated that for whatever she deposed before the Court she was primed by Kankuben, her grandmother. Mr. Vyas, the learned Advocate has therefore tried to take advantage of that statement contending that the witness was tutored, and whatever she stated was nothing but concoction. We disagree with the contention raised. The evidence has to be appreciated as a whole and not by picking one or another sentence. Further in the context natural meaning emerging must or have the sense conveyed predominates and not the meaning foreign to it or the quixotic meaning by suitably stretching. Weighing accordingly what can be said is that she aged about 8 years was unaware about the most proper word to be used to convey the real sense. She was not accustomed to the Court's atmosphere. It appears that, when questions crafty in nature were bombarded she made the statement in the words struck to her at that ticklish moment. What she wanted to convey was that she was advised or guided to tell the truth without being confused or perturbed; and remaining firm. She was not advised or tutored to tell a lie and falsely involve her father. When such meaning of the statement made is perspicuous, we cannot construe incongruously as canvassed. It may be recollected here that the above referred other witnesses have testified the fact about confessional statement made before them by the appellant. On being convicted Saroj was also to lose the shelter of her father, and in that case Kankuben had to shoulder the liability of maintenance of minor grand-children. She would not therefore ill-advise Saroj and instigate her to tell a lie. The statement made therefore cannot perversely be construed laughable meaning cannot be given.

12. The conduct of the accused more eloquent than the words uttered by witnesses cannot be lost the sight of. Right from the beginning his conduct is dubious and unnatural, and revealing guilt and nothing but the guilt on his part. He concealed the

wrong having been committed from several persons with whom he was having relations or contacts. In the school he misguided every one assigning false reason as to why his daughters were not attending the school and where his wife was. He did not allow his daughters to attend the school so as to keep the event occult. Thereafter he also misdirected his mother-in-law, Kankuben and also his brother-in-law, Valchand and put every one to a wrong track telling them that deceased Savitaben was missing and he was deeply engrossed in her search. When accordingly he has deliberately hushed up and has misdirected all the concerned, his conduct reveals his guilty mind. We are fortified by the decision in the case of Smt. Basanti vs. State of Himachal Pradesh - AIR 1987 Supreme Court 1572, wherein also the accused in that case likewise put all concerned to a false track telling a lie, and the Supreme Court then considering his such conduct held that it was sufficient to hold the accused guilty on the basis of that conduct. Let us not miss to mention that the concupiscent appellant had developed familiarity with his student Kavita, a girl of tender age, and Savitaben being the hindrance, the appellant ideated to do away with her. Further the appellant never lodged a complaint with the police so as to find out Savita if she was really missing. He after killing Savitaben packed the dead body in the cask and locked the same by a lock which could be opened by numeration to the set digit which was known to none else. He then buried the cask into the pit which he got prepared under the guise of construction of a latrine. He led the police and panchas to his residence and opened the lock with his key. He showed the pit and brought out the cask and by numeration to the set digit opened the lock. It can therefore be said that he applied the lock, and he alone knew how to open it. When his daughter and relatives made query he some times falterred and some times boldly narrated involving himself. In view of such conduct and law made clear by the Supreme Court, it cannot be gainsaid that in this case the the appellant is rightly held guilty by the learned Judge below.

13. Facing with such situation, Mr. Vyas, the learned Advocate for the the appellant then urged us to show leniency in the matter, to which the learned Additional Public Prosecutor submitted that the flagitious-appellant deserved no leniency. The contention cannot be accepted. Atrocities on women are going berserk and lead the society from civilization to barbarism, and therefore no leniency can be shown. We may at this stage refer to few decisions of the Supreme Court supporting our view. It is held in the matter between Kailash Kaur vs. State of Punjab-AIR 1987 Supreme Court 1368 that murder by bride burning for dowry is barbaric method and by pouring kerosene if some one is charred to death is certainly barbaric and therefore maximum punishment must be awarded as a deterrent. In another case between Virbhan Singh and another vs. State of U.P. - AIR 1983 Supreme Court 1002, while dealing with the question of awarding punishment in the

case of bride killing, it is observed: "The instances of bride killing are alarmingly on the increase. If society should be ridden of this growing evil, it is imperative that whenever dastardly crimes of this nature are detected and the offence brought home to the accused, the courts must deal with the offender most ruthlessly and impose deterrent punishment." In view of such decisions also, no lenient view can be taken. It should also be mentioned that the minimum punishment provided for the offence of murder is life imprisonment, and therefore also in this case, no lighter view than the minimum prescribed can be taken. The learned Judge was hence perfectly right in awarding the life imprisonment to the the appellant.

14. In view of the matter, we see no justification to interfere with the conclusions drawn by the learned Judge below, and his Judgment and Order convicting and sentencing the appellant. The appeal is, therefore devoid of merits and is liable to be dismissed. We accordingly dismiss the appeal and maintain the judgment and order of conviction and sentence passed by the lower Court.

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